1987

Norman Barber v. The Emporium Partnership : Reply Brief

Utah Court of Appeals

N. George Daines; Daines & Kane; attorneys for respondent.
Raymond N. Malouf; attorney for appellant.

IN THE UTAH COURT OF APPEALS

NORMAN BARBER and HELEN BARBER,
Plaintiffs/Respondents,

vs.

THE EMPORIUM PARTNERSHIP, et al.
Defendants/Appellants.

Case No.870128-CA
(Category 14b)

REPLY BRIEF OF APPELLANTS

APPEAL FROM AN ORDER OF THE
FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY
JUDGE VENOY CHRISTOFFERSON

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IN THE UTAH COURT OF APPEALS

NORMAN BARBER and HELEN BARBER,
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Appellants
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LIST OF ALL PARTIES

Plaintiff, Norman Barber and Helen Barber, husband and wife.

Defendants, The Emporium Partnership,
a Utah Limited Partnership

Individual Alleged Partners:

Von K. Stocking

Don A. White, Jr.

Raymond N. Malouf, Jr.

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Section 15-1-4 - Any judgment rendered from a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties, which shall be specified in the judgment.

RULES

U.R.C.P. Rule 54(e) - Interest and costs to be included in the judgement.

STATEMENT OF FACTS, A REPLY WITH ARGUMENT

Respondents have misstated the language of the Judgment. The interest of $2,180.00 was the amount of interest the Judgment allowed from the date of judgement until the judgment was paid. There can be no other interpretation of the language without changing what is said. To read in the idea that the $2,180.00 was intended by the Court to apply until only until the date of judgment is contrary to the pleadings which were prepared by the Plaintiffs themselves and ignores the fact that the Plaintiffs never did correct their judgment. Even Respondents admit the language is somewhat unclear. That means it can be construed against them under the circumstances.

The June 5, 1979 Order permitted the Defendants to take any appropriate action when the Judgment was sought to be enforced. That appropriate action was very broad, and applied to all of the Defendants arguments which were raised in connection with the Motion when the Order was given. The Court did not specify those elements, but because the Defendants did, they still are reserved. All of them are a defense to enforcement of the Judgment.

Although the Court subsequently alleged it had previously ruled on various motions filed by the Defendants, it in fact had not. Plaintiffs refer the Court to the trial record at 101 which is a motion by the Defendants for certain relief. However, that motion comes in the midst of a flurry of motions which commence as early as at least October 8 (Record at 94 et. sec). Defend-

ants pointed out to the Court numerous motions and issues which had never been ruled upon, and showed that the Court had reserved to the Defendants the right to take appropriate action. Even though the Court had not actually dealt with these issues, the Court in its decision of November 30, 1982, Record at 110, claimed that no new matters had been raised that had not previously been decided by the Court. However, if these have been decided, the decisions were well hid. The Court did not discuss the question of interest in excess of the judgment which Plaintiffs were trying to collect, even though at page 101 Defendants made mention of the fact that the judgment did not allow Plaintiffs to try for as much money as they were trying for. Since the Court allowed Defendants the right to raise various motions whenever enforcement was attempted, Defendants were free to raise that issue again and again. Moreover, the Court's Order, Record 110, did not amend the Judgment, nor could it have.

In pleadings dated November 8, 1982, Record 108, Plaintiffs admitted they took the judgment as stated and also compounded the interest. Nowhere in the judgment is this permitted.

The remainder of Respondent's factual allegations lack merit or are disposed of in the Brief of Appellants.

SUMMARY OF ARGUMENT

This Judgment did not bear interest beyond a specified amount, which the judgment provided would be the amount allowed until the judgment was paid. The judgment was never changed. The Court allowed the Defendants to make all the appropriate

motions if the Plaintiff's tried to enforce the Judgment. To have the Judgment allow accruing interest, it should have been changed but was not. The one case provided by Plaintiffs, in fact, would support a conclusion that the Judgment and Order below should be reversed.

ARGUMENT

Respondents cite one case only. Dairy Distributor's Inc. v. Local Union 976 et al. 12 U2d 85, 396 P2d 47 (1964), is argued as authority by Respondents for a conclusion that interest follows the judgment where statutory interest is permitted. However, the judgment in the instant case did not provide for statutory interest. It omitted it. Instead, the judgment provided far less than what might have been allowed had the pleadings been broader and the judgment drafted better. Under the circumstances, statutory interest is not permitted. In Dairy Distributors, the Plaintiff filed a motion in 1963 to amend the Plaintiffs' 1957 judgment to provide for interest. The findings showed the clerk of the Court failed, because of oversight and inadvertence, to fill in blanks provided for interest under Rule 54(e). That Rule says that the clerk must include interest in any judgment signed by him, if the same has been ascertained. The instant case does not involve the signing of a judgment by the clerk, or filling in blanks. No more interest was ascertained. The judgment was signed by the Judge and prepared by the Plaintiff. No oversight or inadvertence is alleged in the instant case. No clerk oversight or inadvertence exists.

Respondents filed no motion to correct the judgment and did not collect it before it expired. They have, however, tried to broaden its terms in their effort to renew the judgment.

Respondents wrongfully ask this Court to affirm more than a mere correction of an inadvertent omission. Because of the clerk's omission in Dairy Distributors, the Court was able to apply 15-1-4, U. C. A. and say interest would be accrued and be collectable even though the judgment did not so provide. But, Section 15-1-4 U.C.A. also says interest must be specified in the judgment. The present case not only lacks an empty blank, but fails entirely to include language to specify the interest Respondents want to add. This case is not a situation where the judgment "did not so provide" for interest. It provided a specific amount, which limited Plaintiffs from any more. Any lawyer should be able to see it does not specify accruing interest.

A mere lapse of time is not the problem with the instant judgment, as it was in Dairy Distributors. There were additional problems with the language, which foreclosed more interest.

One reason Respondents refer to no more cases than this one is the fact that Dairy Distributors has been referred to only twice, neither of which help Plaintiffs, but the other two cases are of interest. It was cited along with other cases to support a New Mexico decision in Barker v. Barker 608 P2d 138 (N.M. 1980) to allow a July 1, 1977 Indiana divorce decree to be given full faith and credit by New Mexico in its December 21, 1978 Order. However, as in Dairy Distributors and unlike the instant case, no

terms or conditions were added to the Indiana decree. The action dealt with New Mexico full faith and credit jurisdiction only.

In another divorce case, Preece v. Preece 682 P2d 298 (Utah 1984), this Court referred to Dairy Distributors for authority ". . . to do an act upon one date and make it effective as of a prior date so that the record accurately reflects that which took place." Id, at 299. The Preece case was also from Judge Christoffersen's Court. The Judge in the hearing said the decree would be final "upon signing". He signed the decree after Mr. Preece died, and made the divorce effective on the hearing date. This very Court recognized that action by the trial court as a substantial departure from the earlier announcement, and directed that the decree be vacated and the action dismissed. The result was Mrs. Preece was a surviving widow instead of a divorced spouse. This Court said even nunc pro tunc orders ". . . should be the reflection of a previously made ruling" Id. at 300. The instant case lacks a previously made ruling to support Plaintiffs' position.

The function of nunc pro tunc orders is not to make an order "now for then, but to enter now for then an order previously made" Id. at 299. Since there was never a previous order in the instant case allowing anything more than "interest from the date hereof (April 18, 1979) until paid (it was paid, but Plaintiff never recognized payment) in the amount of $2,180.00", allowance of more interest is contrary to law and not allowed. Judge Christoffersen's Order should be vacated here, just as his extra-legal action in Preece was disallowed in 1984.

CONCLUSION

Neither Dairy Distributors nor any other authority would allow the Plaintiffs or the trial court to expand the Judgment beyond what its terms allowed. The Writs of Execution should be stricken as requested by Defendants.

Respectfully submitted this 14th day of July, 1987.

Raymond N. Malouf
Attorney for Defendants/Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 1987 four copies of the foregoing RESPONDENTS REPLY BRIEF regarding Case No. 870128-CA, postage prepaid to the following:

N. George Daines, Esq.
DAINES & KANE
108 North Main, Suite 200
Logan, Utah 84321

Raymond N. Malouf

Addendum:

A. Defendants Motion for Relief from Judgment and to Strike Supplemental Proceedings to Record 10/28/82 (R 94).....A

B. Order 10/29/82 (R 99)..... B

C. Clerk entry (R 100)..... C

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STATUTES

Utah Code (1953)

Section 15-1-4 - Any judgment rendered from a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties, which shall be specified in the judgment..... Attached

RULES

U.R.C.P. Rule 54(e) - Interest and costs to be included in the judgement..... Attached

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Telephone: 752-9380

DISTRICT COURT, STATE OF UTAH, COUNTY OF CACHE

NORMAN BARBER and HELEN BARBER, husband and wife,
Plaintiff

vs.

THE EMPORIUM PARTNERSHIP, and VON K. STOCKING, DON A. WHITE, JR., and RAYMOND N. MALOUF, JR., general partners,
Defendant

DEFENDANTS' MOTION FOR RELIEF FROM JUDGMENT AND TO STRIKE SUPPLEMENTAL PROCEEDINGS

Civil No. 17630

Defendant Raymond N. Malouf requests relief from that judgment entered against him on April 18, 1979. Defendant further moves for this Court to strike the Supplemental Proceedings against this Defendant pending resolution of this motion. The basis for this motion, notwithstanding the Court's recent Memorandum Decision of October 19, 1982, and the reason relief should be granted (and the justification of this relief notwithstanding prior decisions) is as follows:

1. The Court said October 19, 1982 that Defendant's April 28, 1982 Motion for Relief from Judgment was not timely filed. Yet, most of the same arguments were raised after the Judgment and prior to the Court's Memorandum Decision of May 21, 1979, to wit: that the Plaintiff's status as limited partners imposed restrictions on the time and manner of payment, both according to the partnership agreement and according to Utah Code, Section 48-2-14(1); and that in view of the then current cash flow problems of the Emporium entity, Plaintiffs were restricted from proceeding to collect. Several other points were also raised in the detailed pleadings dated May 21, 1979 and April 30, 1979 from the Defendants. In its Memorandum Decision dated May 21, 1979, the Judge stated:

> Defendant has filed a motion for amendment to the judgement, relief from judgment and a stay of execution. Generally the thrust of Defendants' argument goes to questions of how the judgment should be enforced and priorities in connection therewith.

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EXHIBIT A

> Therefore, Defendants' Motion is denied, of course, without prejudice to take any appropriate action when the Judgment is thought to be enforced. (Emphasis supplied).

The underlined language in view of the length of the decision, was obviously not to be taken lightly and, was not. Even though it is unusual language for a Memorandum Decision on a Summary Judgment Motion, it certainly must mean something. Defendants believe it must now be applied to this Judgment according to several factors which existed including (1) the Bankruptcy Law that existed at the time; (2) the status of the partnership; and (3) the status of the agreements in effect between the Plaintiffs as partners lending money and the Defendant. Defendants believed then, and believes now, and relied on the belief, that the Court did not believe that the collection of the judgment was enforceable at the time the Memorandum Decision was rendered because of all the arguments the Defendants had raised, and that those arguments were not rejected.

Defendants strongly believe that the Court, in its Memorandum Decision of October 19, 1982, has not addressed the question of exactly what "appropriate action" is in the event enforcement is attempted in view of the arguments raised by Defendants pleadings entitled "Reply. . ." and dated May 13, 1982. In that pleading Defendants argued that the Plaintiffs were estopped because of their limited partnership status, Utah law, and the contract from proceeding against this Defendant. The Court, after argument, indicated it would review the arguments in the pleadings. Because of the May 21, 1979 decision, it should not have dismissed Defendants' argument as having been untimely filed, because they had been timely filed April 30 and May 21, 1979, and were kept in reserve by the Court's decision on May 21, 1979. The door having been left open by the Court on May 21, 1979, it should now provide an interpretation as to what the "appropriate action" was, by applying that standard to each of the arguments raised by the Defendants. This is necessary to permit the Court's order to make sense to either adequately explain to the Defendants what was intended or to provide a basis for appellate review.

2. Rule 60(b) U.R.C.P. does not present a timeliness issue under subparts 5, 6 and 7. It is under these subparts that this motion is made, as was the April 21, 1982 Motion.

EXHIBIT A

3. Defendant herein makes two arguments for the fact, under subpart (5) of Rule 60(b), that the Judgment is void. First, the pleadings do not at any point reflect the fact that this Defendant was a general partner at the time the Barber's note was signed by Von Stocking and Don White in November of 1977. For purposes of this pleading, Defendant herein did admit he was a general partner, but the admission, as framed by the pleading, can only go to the status in January 1979, when the suit was filed. There is no basis to believe this Defendant was a general partner for the prior debt, which this suit was all about. The general partner does not assume the debts of an entity in which he was not a general partner unless there is a specific acknowledgement to that fact, and there was none. Neither the Findings of Fact and Conclusions of Law nor any pleadings say this Defendant was a general partner when that note was signed, or make a finding that he should be accountable for the note. Accordingly, it should be found that the judgment is void as against this Defendant because the pleadings don't support the judgment. Or, the Plaintiff should have to litigate the question of whether this Defendant was a general partner at the time the note was signed in view of the fact that he has never admitted personal liability for that note, his signature did not appear on the note, nor did his name appear with any payments on the note from the partnership, checks of the partnership. See Davis v. West et. al, 71 F.Supp 377. A partner is not liable for contracts concluded before he became a partner without a special agreement. The judgment can be modified to exclude such a partner.

Second, the judgment as it is attempted to be enforced is void against this Defendant because this Defendant is not jointly and severally liable even if he was a general partner at the time the note was signed. To wit, the Complaint, the Findings of Fact and Conclusions of Law, and the Judgment all fail to recite joint and several liability, and Section 48-1-12 of the Utah Code Annotated does not permit joint and several liability. This was argued as point three in the reply dated May 13, 1982. Also referred to is the case of Palle v. Industrial Commission, 7 P2d 284 which required proceeding against members on a debt jointly, and not separately. Thus the distinction between "joint" and "joint and several" is critical in this case, and the judgment is voidable against this Defendant as this Defendant singled out for proceedings separately from all other Defendants which is

EXHIBIT A

contrary to 48-1-12, Utah Code Annotated. Defendant believes Plaintiff wants payment of the whole debt from him alone based on the Plaintiff's efforts and such a result is not within the meaning of UCA 48-1-12 or the Bankruptcy laws as they exist at the time of the Judgment, which required payment of a partners individual debts before payment of partnership debts. See Rule 5(g) Bankruptcy Act and S. Rep 989,95th congress, 2nd Sess. 95 (1978).

4. Defendant also requests relief under subparagraph (6) of Rule 60(b) in that it is no longer equitable that the Judgment should have prospective application against this Defendant in view of the foregoing arguments and the contents of the pleadings in the file and the prior decisions of this Court, which specifically permit the Defendants to, without prejudice, take "appropriate action" if enforcement of the Judgment is attempted. Because the Court lead Defendants to believe that they could take appropriate action when the judgment was sought to be enforced, the Defendants rightly believed that included in that appropriate action is the right to rely on the statutes of this state and the U.S. as well as the agreement made by the Plaintiffs notwithstanding the judgment the Court entered. The Judgment because of the qualification in the Court's memorandum decision and the subsequently entered order, is not enforceable without limitations, and is not enforceable singly against this Defendant.

5. Defendants also request relief under Rule 60(b)(7) for the reason that if this Defendant is to be considered a general partner for purposes of the defense, then his assets are subject to the provisions in Section 723(a) of the Bankruptcy Reform Act. It is inconceivable that the Court would consider Defendants' Motion for Relief under this section as untimely in view of the fact that the Bankruptcy status of the partnership was created well after the judgment in May of 1979. Bankruptcy was filed in November 1979, and the matter was converted to a liquidation bankruptcy in May of 1981, where it still resides. Plaintiffs should be estopped from actions in State Court under the Stay Order. These recent attempts at Supplemental Proceedings have been the first since the bankruptcy. The appropriate relief contemplated by the Court in May of 1979 certainly could include the Stay Order issued by the Bankruptcy Court, and the provisions of section 723(a) of the Bankruptcy Reform Act. Defendant requests the Court to specifically address its reasoning, if any, for rejecting this claim for relief.

EXHIBIT A

6. Petitions for relief under Rule 60(b)(5, 6, 7) do not face a time limit for asking for relief. The Court is also permitted to set aside a judgment for fraud upon the Court. A review of the pleadings on this matter abundantly shows that initial counsel for the Plaintiffs purpetrated fraud, either by mistake or on purpose, by failing to allege and prove that this Defendant was a partner at the time the note was signed or was otherwise responsible for the note. He only alleged parter status at the time the pleadings were filed. The Court was also misinformed by Plaintiffs who presented arguments which wholly ignored the fact that the Plaintiffs had signed an agreement which prospectively governed the circumstances of their loan to the partnership. There is adeqaute basis for this Court to set aside the judgment as it applies to this Defendant for all of these reasons, too.

DATED this 28 day of October, 1982.

Raymond N. Malouf

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of October, 1982 I mailed a true and correct copy of the foregoing to N. George Daines, Esq., Attorney for Plaintiffs, 128 North Main, Logan, Utah 84321 by depositing said copy in the U.S. mail, postage prepaid.

Secretary

EXHIBIT A

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Telephone: 752-9380

DISTRICT COURT, STATE OF UTAH, COUNTY OF CACHE

NORMAN BARBER and HELEN BARBER, husband and wife,
Plaintiff

vs.

THE EMPORIUM PARTNERSHIP, and VON K. STOCKING, DON A. WHITE, JR., and RAYMOND N. MALOUF, JR., general partners,
Defendant

ORDER

Civil No. 17630

Based on the Motion for Relief from Judgment presented to this Court by Defendant Raymond N. Malouf, the Court hereby ~~strikes~~ stays the Motion in Supplemental Proceedings, which was ordered for the 1st day of November, 1982. until Motion Decided

DATED this 29 day of Oct, 1982.

VeNoy Christoffersen,
District Court Judge

17630-38

BOOK 50 441

EXHIBIT B

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF UTAH

ORDERED ENTERED November 1, 1932
CASE NUMBER 17630

Norman & Helen Barber
Plaintiff

vs.

The Emporium Partnership
Defendant

VE NOY CHRISTOFFERSEN, Judge
..... Judge
George Parker, Court Reporter
..... Court Reporter
C. Gibbons Court Clerk

Type of hearing: Supp. Proceedings XX OSC ..... Other .....

Present: Pltf ..... Deft ..... Ret. of Serv. ..... Stipulation .....

P. Atty ..... On motion of .....

D. Atty ..... the matter is continued to .....

Sworn and Examined: .....

Pltf ..... Deft ..... Dismissed .....

Others .....

Order filed. Hearing continued without date till motion is decided.

EXHIBIT C

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Attorneys for Defendants
150 East 200 North #D
Logan, UT 84321
Telephone: 752-9380

DISTRICT COURT, STATE OF UTAH, COUNTY OF CACHE

NORMAN BARBER and HELEN BARBER, husband and wife,
Plaintiff

vs.

THE EMPORIUM PARTNERSHIP, and VON K. STOCKING, DON A. WHITE, JR., and RAYMOND N. MALOUF, JR., general partners,
Defendant

MOTION TO STRIKE WRIT OF EXECUTION AND MOTION TO RELEASE LEVIED FUNDS

Civil No. 17630

Defendants move this Court strike the Writ of Execution issued by the Clerk of the Court on October 26, 1982 for the reason that the Writ of Execution alleges a total sum due of $31,693.65, which amount is $10,000, or more, greater than the amount of the Judgment as recorded.

Defendants further move that the Court release that certain levy against a check made payable to the Cache County Sheriff in the amount of $2,599.42 for the reason that the check delivered to the Sheriff was delivered as partial satisfaction of a judgment entered in No. 20610A in this Court, (Malouf, Malouf & Jenkins vs. Don C. Loosle). There is no order of this Court finding that any amount of money owed to Malouf, Malouf & Jenkins is available for execution in satisfaction of a judgment entered against Raymond N. Malouf, Jr., and as such, such a levy is contrary to law and represents an abuse of process.

DATED this 2 day of November, 1982.

Raymond N. Malouf

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of November, 1982, I mailed a true and correct copy of the foregoing to N. George Daines, attorney for Plaintiffs, 128 North Main, Logan, Utah 84321 along with a copy of the proposed order by depositing said documents in the U.S. Mail, postage prepaid.

17630-34

Debby Miller
Secretary

EXHIBIT D

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Attorneys for Defendants
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Logan, UT 84321
Telephone: 752-9380

DISTRICT COURT, STATE OF UTAH, COUNTY OF CACHE

NORMAN BARBER and HELEN BARBER, husband and wife,,
Plaintiff

vs.

THE EMPORIUM PARTNERSHIP, and VON K. STOCKING, DON A. WHITE, JR., and RAYMOND N. MALOUF, JR., general partners,
Defendant

REPLY

Civil No. 17630

In support of Defendants' prior Motion for Relief from Judgment and to Strike Supplemental Proceedings, the Defendants reply to the Plaintiffs' Memorandum as follows:

1. Defendants' Motion dated October 28, 1982 for relief from judgment states those several objections which exist and which provide a legitimate basis for the Court to deny Plaintiffs' Motion and Supplemental Proceeding.

2. The October 28 Motion has not been resolved and it is, therefore, inappropriate to reset supplemental proceedings.

3. The October 28, 1982 Motion requested this Court to explain its prior memorandum decision in view of each of the arguments in the context of the Court's prior order of May 21, 1979. In that Order the Court said the Defendants' Motions were denied without prejudice to take any appropriate action when the judgment is sought to be enforced. Based on that language, the Defendants did nothing further until the Plaintiffs sought enforcement of the Judgment. At that point, various arguments were raised. It is alleged in the October 28 pleading that such arguments, in view of the Court's language that appropriate action could be taken later when the Judgment was sought to be enforced, would and did toll at a time any 60(b) Motions need to be made.

4. Most of the motions for relief from judgment are not barred in any event by the three month limitation in Rule 60(b) so the Defendants are entitled to an explanation as to the basis of each of their objections, and the Court should deal with each of them on other than a timeliness basis.

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EXHIBIT E

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5. The Defendants also, in the October 28, 1982 Motion, argue for relief of full liability of Defendant Malouf based on Utah Statute 48-1-12 which only allows for joint but not joint and several liability under the facts in this case.

6. Since the Court told the Defendants they could take appropriate action if enforcement of the Judgment was sought, the Court should enter an order dealing with all of the requests for relief filed April 30 and May 21, 1979 and thereafter by this Court, so that the Defendnats will have a ruling from this Court on each of those points which will provide either an interpretation of what appropriate relief the Court had in mind, a basis for the Court's deniel of the relief as requested then (which was never given then) and a basis for appellet review, or any of the foregoing.

7. The Plaintiff has illegally attempted to levy on monies owed Defendant's firm. He falsely assumes that all of it is money to which the Defendant is entitled.

DATED this 9 day of November, 1982.

Raymond N. Malouf

CERTIFICATE OF MAILING

I hereby certify that on the 10 day of November, 1982 I mailed a true and correct copy of the foregoing to N. George Daines, 128 North Main, Logan, Utah 84321 by depositing said copy in the U.S. mail, postage prepaid.

Secretary

EXHIBIT E

N. George [illegible]
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128 North Main
Logan, Utah 84321
Telephone: 753-4403

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

OF THE STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

NORMAN BARBER and HELEN BARBER, husband and wife, Plaintiff, vs. THE EMPORIUM PARTNERSHIP, and VON K. STOCKING, DON A. WHITE, JR., and RAYMOND N. MALOUF, JR., general partners, Defendants.	RESPONSE TO MOTIONS Civil No. 17630

COME NOW the Plaintiffs Barber and respond to Defendant Malouf's Motion to Strike Writ of Execution to Release Funds as Follows:

I. CALCULATION OF AMOUNT OF JUDGMENT IS CORRECT.

Plaintiff's Counsel simply took the judgment as stated figured the principal amount, attorneys fees and compounded interest. If Defendant Malouf's calculations reveal a different set of figures he should indicate their method of computation and the court can decide the correct computation. This is quite irrelevant here because any method of calculation will yield an amount at least five times longer than the amount levied upon.

II. EFFECTIVENESS OF A LEVY ON PARTNERSHIP FUNDS FOR A DEBT OF ONE OF THE INDIVIDUAL PARTNERS.

At present the Plaintiffs have served the Sheriff with an execution respecting the interest of Mr. Ray Malouf as a partner reletive to a sum of money the Sheriff holds which is payable to Malouf, Malouf & Jenkins a partnership. Concurrently therewith Mr. Ray Malouf was served with a Motion and Order respecting Supplementary Proceedings requiring him to be present on November 1, 1982 to which he has again objected and to which the

EXHIBIT F

Plaintiffs have responded.

The Utah Code handles this situation with specificity. See §48-1-25 U.C.A. 1953, wherein it states that under these circumstances the court shall determine the rights of the debtor partner to the asset in question and shall direct that amount to be applied against the unsatisfied judgment. Had Mr. Malouf not objected that hearing would have occurred on November 1, 1982. Pending that hearing no funds can or should be ordered released from the Sheriff's custody.

The fact that Mr. Malouf has filed yet another frivolous motion to avoid his proper appearance should not be the occasion for this court to allow him to further escape the effect of this unsatisfied judgment.

WHEREFORE Plaintiffs pray that the Court direct Defendant Malouf to declare what specific interest he has in the funds held pursuant to §48-1-25, that the Sheriff might properly apply that amount against his unsatisfied judgment.

DATED this 8th day of November, 1982.

N. George Daines
Attorney at Law

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Response to Motions was mailed, postage prepaid to Mr. Raymond N. Malouf of MALOUF, MALOUF & JENKINS, 150 East 200 North #D, Logan, Utah 84321 on the 8th day of November, 1982.

EXHIBIT F

IN THE FIRST DISTRICT COURT OF CACHE COUNTY, UTAH

- - - - - - -

NORMAN BARBER and HELEN BARBER, husband and wife,

Plaintiffs,

vs.

THE EMPORIUM PARTNERSHIP, and VAN K. STOCKING, DON A WHITE, JR., and RAYMOND N. MALOUF, JR., general partners,

Defendants.

MEMORANDUM DECISION

Civil Number 17630

- - - - - - -

Defendant Raymond N. Malouf, has filed a Motion For Relief From Judgement and to strike Supplemental Proceedings. No new matters have been raised in this motion that have not previously been decided by the court in granting the judgement in question, therefore, the motion is denied and the previous order staying Supplemental Proceedings will be terminated. As to the motion to strike a writ of execution, and a motion for release of levied funds; if such funds belongs to third-parties they may seek relief under 69(j).

Counsel for Plaintiffs to prepare the appropriate order.

DATED this 30th day of November, 1982.

DISTRICT JUDGE

Copy of the above mailed to
N. George Daines, 128 No. Main, Logan, Utah 84321
Raymond N. Malouf, 150 E. 2 No., #D, Logan, Utah 84321
this 1st day of December, 1982.
BETH S. ALLEN, Clerk.
By Deputy

Number 17630-45

BOOK 50 711

FILED DEC 1 1982

EXHIBIT G

110

15-1-4. Interest on judgments.

Any judgment rendered on a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties, which shall be specified in the judgment; other judgments shall bear interest at the rate of 12% per annum.

History: L. 1907, ch. 46, § 11; C.L. 1907, § 1241x9; C.L. 1917, § 3330; R.S. 1933 & C. 1943, 44-0-4; L. 1981, ch. 73, § 2.

Amendment Notes. — The 1981 amendment increased the interest rate from 8% to 12%.

Cross-References. — Interest to be included in judgment entry, Rules of Civil Procedure, Rule 54(e).

PART VII JUDGMENT

Rule 54. Judgments; Costs

(e) **Interest and Costs to be Included in the Judgment.** The clerk must include in any judgment signed by him any interest on the verdict or decision from the time it was rendered, and the costs, if the same have have been taxed or ascertained. The clerk must, within two days after the costs have been taxed or ascertained, in any case where not included in the judgment, insert the amount thereof in a blank left in the judgment for that purpose, and make a similar notation thereof in the Register of Actions and in the Judgment Docket.